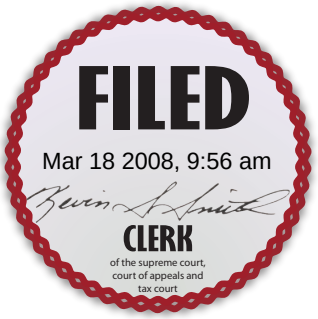

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IN THE
COURT OF APPEALS OF INDIANA

VINCENT L. WALTON,	)	
	)	
Appellant-Petitioner,	)	
	)	
vs.	)	No. 49A05-0604-PC-183
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Respondent.	)	

APPEAL FROM THE MARION SUPERIOR COURT
CRIMINAL DIVISION, ROOM 4
The Honorable Steve J. Rubick, Commissioner
The Honorable Patricia J. Gifford, Judge
Cause Nos. CR87-209D & CR87-221D

March 18, 2008

MEMORANDUM DECISION – NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Petitioner, Vincent Walton (Walton), appeals the post-conviction court's denial of his petition for post-conviction relief.

We affirm.

ISSUE

Walton raises two issues, which we consolidate and restate as: Whether his trial counsel was ineffective.

FACTS AND PROCEDURAL HISTORY

In July and August of 1987, the State filed petitions alleging that the sixteen-year-old Walton was a delinquent based on two incidents. Based on a 1986 incident, the State alleged that Walton was a delinquent for having committed acts that, if committed by an adult, would have been attempted murder, a Class A felony, Ind. Code §§ 35-41-5-1 & 35-42-1-1; burglary, as a Class A felony, I.C. § 35-43-2-1; and criminal confinement, as a Class B felony, I.C. § 35-42-3-3. Based on a 1987 incident, the State alleged that Walton was a delinquent for having committed acts that, if committed by an adult, would have been two counts of attempted murder, a Class A felony, I.C §§ 35-41-5-1 & 35-42-1-1; robbery, as a Class A felony, I.C. § 35-42-5-1; and two counts of criminal confinement, as a Class B felony, I.C. § 35-42-3-3. Walton's parents hired an attorney to represent him.

Eventually, the juvenile court waived jurisdiction. On September 16, 1987, with regard to the 1986 incident, the State charged Walton as an adult under cause number CR87-209D (Cause No. 209D). On September 17, 1987, with regard to the 1987 incident, the State

charged Walton as an adult under cause number CR87-221D (Cause No. 221D). Walton's attorney did not enter appearances on behalf of Walton in the criminal cases until more than five months later, on February 19, 1988, in Cause No. 221D and on March 9, 1988, in Cause No. 209D. On April 20, 1988, Walton pled guilty to attempted murder and Class A felony burglary under Cause No. 209D and as charged under Cause No. 221D. On May 20, 1988, the trial court imposed a total executed sentence of sixty years.

On March 4, 2005, Walton filed a petition for post-conviction relief. In his petition, Walton alleged (1) that his attorney advised him to reject plea agreements that were more favorable than the one he finally accepted and misled him regarding the sentence he would receive and was therefore ineffective and (2) that the record does not establish sufficient factual bases for the attempted murder counts. On October 19, 2005, the post-conviction court held an evidentiary hearing on Walton's petition. On February 3, 2006, the post-conviction court entered written findings of fact and conclusions of law denying relief.

Walton now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

On appeal, Walton contends that the evidence established that his attorney was ineffective because he failed to sufficiently consult with Walton's parents and because of the delay in entering his appearance on behalf of Walton. Walton originally raised these claims of ineffectiveness at the evidentiary hearing and in his proposed findings of fact and conclusions of law. However, he did not do so in his petition for post-conviction relief. "Issues not raised in the petition for post-conviction relief may not be raised for the first time

on post-conviction appeal." *Allen v. State*, 749 N.E.2d 1158, 1171 (Ind. 2001), *reh'g denied, cert. denied* 535 U.S. 1061 (2002); *see also* Ind. Post-Conviction Rule 1(8) ("All grounds for relief available to a petitioner under this rule must be raised in his original petition."). As such, Walton has waived his claims.

Even if Walton had properly raised these issues, he has not established that he is entitled to relief. To establish a claim of ineffective assistance of counsel, the petitioner must demonstrate both deficient performance and prejudice. That is, the petitioner must show (1) that his attorney's performance fell below an objective standard of reasonableness based on prevailing professional norms and (2) that there is a reasonable probability that, but for the attorney's errors, the result of the proceeding would have been different. *Johnson v. State*, 832 N.E.2d 985, 996 (Ind. Ct. App. 2005), *trans. denied*. If we can dismiss an ineffective assistance claim based upon the prejudice prong, we may do so without addressing whether counsel's performance was deficient. *Id*. Such is the case here.

Walton first claims "that his constitutional right to due process was impeded when his parents were not consulted by his trial counsel and allowed to share in the decision making with their minor son." (Appellant's Br. p. 7). He concludes with this confusing flurry:

> The enforcement and protection of rights in the juvenile court[1] has to be considered in light of the child's best interests. Thus, in this case, the question of whether child or parents objected to the removal of the parents could be a crucial part of the analysis. While the child was waived to adult court, as a minor so was the parent waived. Although the child was eventually tried as an adult his parents were never severed for being responsible for his act as a minor. His acts as a minor never emancipated him to an adult to own property, vote, drink or make any other major decisions. The simplest solution to the

[1] As noted in the Facts and Procedural History, Walton's cases were waived from juvenile court to adult court.

> whole violation is for a ruling that because of the attorney's delay of becoming involved, did not give to him the power to use the parent to influence the minor on letting off the attorney by just entering a plea of not guilty, now to a charge that carried more sentence than a previously offered. The attorney was ineffective in the case at bar.

(Appellant's Br. pp. 13-14). Again, a finding of prejudice requires the petitioner to show a reasonable probability that the result of the proceeding would have been different if his counsel had not made the alleged errors. *Johnson*, 832 N.E.2d at 996. Even if we assume, *arguendo*, that Walton's attorney performed deficiently, Walton has made no attempt to show how the result in his cases would have been any different if his attorney had consulted further with his parents.

Walton also argues that his attorney was ineffective because of his delay in entering his appearance on behalf of Walton after the cases were waived out of the juvenile court. Walton contends that the delay led to his attorney "failing to timely and adequately prepare his trial defense[.]" (Appellant's Br. p. 15). Specifically, Walton states:

> There were a number of witnesses available at the time of the waiver to adult court and willing to come to court to testify in behalf of [Walton]. Had [Walton's attorney] heard these witnesses they would have established an alibi defense in one cause of action, and in the other cause of action shown to the jury that [Walton's] character was such that he could not been [sic] the accuse[d].

(Appellant's Br. p. 16). However, Walton fails to explain how the timing of the filing of the appearance affected his attorney's ability to investigate certain witnesses or pursue the alibi defense. Furthermore, Walton does not tell us who the additional witnesses are or how they would testify. Such general claims are insufficient to establish prejudice. *See May v. State*,

578 N.E.2d 716, 722 (Ind. Ct. App. 1991) (no prejudice proven where petitioner fails to indicate substance of unrealized testimony).

CONCLUSION

Based on the foregoing, we conclude that Walton waived the issues he seeks to raise on appeal by failing to raise them in his petition for post-conviction relief and that, even if Walton had properly raised the issues, he has not established that he is entitled to relief.

Affirmed.

KIRSCH, J., and MAY, J., concur.